

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 14177US02)

In the Application of:)	Electronically Filed:
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Ed H. Frank)	July 25, 2008
)	
Serial No. 10/658,310)	
)	
Filed: September 9, 2003)	
)	
For: METHOD AND SYSTEM FOR)	
PROVIDING MULTIPLE)	
ENCRYPTION IN A MULTI-BAND)	
MULTI-PROTOCOL HYBRID)	
WIRED/WIRELESS NETWORK)	
)	
Examiner: Carlton Johnson)	
)	
Group Art Unit: 2136)	
)	
Confirmation No. 2145)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper responds to the Final Office Action mailed on May 2, 2008 ("Final Office Action"), and the Advisory Action mailed on July 14, 2008 ("Advisory Action") in the above-identified patent application. The Applicant respectfully requests review of the final rejection in the above-identified application, in consideration of the following remarks.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS / ARGUMENTS

The present application includes pending claims 1-42, all of which have been rejected as being unpatentable under §103(a) over US PG PUB No. 20030140131, by Chandrashekhar et al. (hereinafter, "Chandrashekhar") in view of Giniger et al., US Patent No. 6,751,729 (hereinafter "Giniger"), and U.S. Patent No. 6,088,451, issued to He et al. (hereinafter "He et al."). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

A. Rejection of Independent Claims 1, 15 and 29 under 35 U.S.C. § 103 (a)

Initially, the Applicant remarks that the Advisory Action does not address the arguments put forward by the Applicant's response to the Final Office Action. Thus, the arguments made in the Final Office Action are restated below.

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that Chandrashekhar, alone or in combination with Giniger, does not disclose or suggest at least the limitation of "hosting said communication session over a third PHY channel, said third PHY channel established between said access point and said originating access device" as recited by the Applicant in independent claim 1.

In response to the Applicant's arguments put forward in the response of January 16, 2008, the Final Office Action essentially makes the argument that the Applicant's claim limitation does not disclose that the same two nodes are used for each of the three disclosed PHY communication links. Final Office Action, p. 3. The Final Office Action particularly focuses on the second PHY channel. However, this argument fails to address the point made by the Applicant, namely that the communicating nodes for the *first* and the *third* PHY channels are the same. For this reason, the Examiner's arguments put forward in the Final Office Action are addressed below in detail, in addition to the reasoning already put forward in response to the Office Action mailed on October 30, 2007 ("Office Action").

The Examiner states in the Final Office Action that "there is no disclosure of multiple links . . . active at the same time between a pair of nodes. Applicant states this in arguments as a limitation but this is not in the claimed invention." Final Office Action, p. 3. Initially, the Applicant does not claim that the invention is limited to concurrent communications on multiple links. Consequently, the Applicant did not argue that concurrent links are a limitation of the invention, contrary to what is claimed in the Final Office Action. The Applicant's response of January 16, 2008 does not include any argument based on concurrency of communication links. On the contrary, the Applicant hereby asserts that the first

PHY channel, second PHY channel, and third PHY channel in claims 1, 15, and 29 are not limited to concurrent or time-division communications, as evidenced from the claim wording. The argument in the Final Office Action to the point of concurrent communications is thus moot. The Final Office Action states:

There is no disclosure that the two nodes are the same two nodes. The authentication procedure between the two nodes in the claimed invention involves communications using an authentication server or a third network node (original claims 3 and 4). This particular authentication procedure does not appear to be between a pair of network nodes. The claim limitation states an access point and an originating access device. There is no disclosure that these are the same two nodes for each the three PHY communication links. Final Office Action, p. 3.

Initially, the Applicant points out that the limitations in claim 1 reads: "receiving on a first PHY channel of an access point, a request for initiation of a communication session from an originating device," and "hosting said communication session over a third PHY channel established between said access point and said originating access device." Thus, the first PHY channel and the third PHY channel utilize the same communicating entities. Regarding the second PHY link, the Applicant, in claim 1, does only specify one of the communication entities, the originating access device. Therefore, the argument put forward in the Final Office Action on page 3 about whether or not the communicating entities and/or nodes are the same ones between a first PHY channel and a second PHY channel is irrelevant. While the Applicant is not conceding that the communicating entities for the first PHY channel and the second PHY channel are or are not the same, the Applicant points out that the response to the Office Action of October 30, 2007 explicitly stated that "the cited references[, Chandrashekhar in view of Giniger and He,] in the Office Action [of October 30, 2007] do not provide support for requesting a communication session on a **first PHY channel**, and hosting said communication session on a **third PHY channel, wherein both communication links are between an access point and an originating device**, as claimed by the Applicant." Thus, the argument regarding the second PHY channel put forth in the Final Office Action, is missing the point, and is not providing any further support that may indicate that Chandrashekhar may anticipate Claim 1, 15, or 29. The Applicant therefore believes to have overcome the 103(a) rejections, and respectfully requests claim 1 be made allowable. Furthermore, the Office Action of October 30, 2007 reads:

[T]he specification states that, 'A communication session may be hosted over the first PHY channel, the second PHY channel or a third PHY channel.' . . . There is no disclosure that a communication session is hosted over the third PHY channels exclusively. If applicant feels there is

disclosure for this particular claims limitation, please feel [free] to indicate the required citations for confirmations. *Office Action, Section 3.1.*

The Applicant points out that interpreting the claims in light of the specification does not require that everything expressed in the specification must be read into all the claims. *Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 957 (C.A. Fed. 1983). If everything in the specification were required to be read into the claims, there would be no need for claims. *SRI Intern. v. Matsushita Elec. Corp. of America*, 775 F.2d 1107, 1121 (C.A. Fed. 1985). Since the Applicant's claim limitation of "hosting said communication session over a third PHY channel" is explicitly stated in the specification, the Applicant respectfully requests the objection to the wording of the claim limitation to be withdrawn. Further, with respect to the above claim limitation, the Office Action of October 30, 2007 states that a physical communications path is a requirement to host a communications session. Also, the Office Action of October 30, 2007 states that "[t]he Chandrashekar prior art discloses multiple communications paths available for access to the authentication server, to host a communications session, and for the secure transfer of security information (encryption/decryption keys)." The Office Action in Section 3.3, and the Final Office Action in Section 5, refer for support to Chandrashekar, paragraph [0040], lines 4-11. Paragraph [0040] of Chandrashekar does specify multiple links as specified by the Applicant in claims 1, 15, and 29. Specifically, paragraph [0040] of Chandrashekar does not specify multiple links between a pair of nodes. Instead, Chandrashekar specifies a number of links, each of which connects a different pair of communicating nodes. The Applicant respectfully asserts that this is different from the Applicants claim, as can be seen readily by reading claims 1, 15, or 29 in their entirety.

The Office Action of October 30th, in Section 5, further refers to Chandrashekar paragraph [0054], lines 3-5, lines 10-12; paragraph [0108], lines 1-5; paragraph [0056], lines 1-3; paragraph [0048], lines 1-7; and Chandrashekar FIG. 3. None of these references, suggest, teach or motivate at least "receiving on a **first PHY channel** of an access point, a request for initiation of a **communication session** from an originating access device" and "hosting **said communication session** over a **third PHY channel**, said third PHY channel established between said access point and said originating access device." Specifically, the cited references in the Office action do not provide support for requesting a communication session on a first PHY channel, and hosting said communication session on a third PHY channel, wherein both communication links are between an access point and an originating device, as claimed by the Applicant. The Applicant hence asserts that claims 1, 15 and 29 constitute patentable subject matter.

The Applicant submits that Chandrashekar, alone or in combination with

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Giniger, does not disclose the independent claims 1, 15, and 29, and respectfully requests that the restriction be withdrawn. Additionally, claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42 depend from independent claims 1, 15 and 29, respectively, and are, consequently, also respectfully submitted to be allowable. Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-42.

II. The Proposed Combination of Chandrashekhar, Giniger, and He et al. Does Not Render Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 Unpatentable

The Applicant notes that the proposed combination of Chandrashekhar, Giniger, and He et al. forms the basis for all of the pending rejections. Since claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 are dependant on independent claims 1, 15, and 29, respectively, the Applicant respectfully submits that the rejection of the dependent claims consequently be withdrawn and the claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 to be allowable.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8105.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: July 25, 2008

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